



N A R U C
National Association of Regulatory Utility Commissioners

February 6, 2004

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

RE: *Notice of Oral Ex Parte Presentations – Copies of this notice filed separately in the following proceedings:*

In the Matter of the Review BellSouth Telecommunications, Inc. Request for Declaratory Ruling That State Commissions May Not Regulate Broadband Internet Access Services By Requiring BellSouth To Provide Wholesale Or Retail Broadband Service To CLEC UNE Voice Customers WC Docket No. 03-251

In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission WC-03-211

In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges. WC Docket 02-361

Dear Secretary Dortch:

On February 3, 2004, the President of the National Association of Regulatory Utility Commissioners (NARUC), Georgia Commissioner Stan Wise, joined by the Chair of NARUC's Communications Committee, Michigan Commissioner Bob Nelson, met with Chairman Powell, Chris Libertelli, Bill Maher and Dane Snowden. Subsequently, joined by NARUC's General Counsel, Brad Ramsay, these two NARUC representatives met with Commissioner Abernathy and her legal advisor Matt Brill. Earlier in the day, Commissioner Nelson and Mr. Ramsay met first with Commissioner Copps and his advisor Jessica Rosenworcel, and later with Commissioner Adelstein's advisor Scott Bergmann. The following day, February 4, 2004, President Wise, joined by Mr. Ramsay, met with Commissioner Kevin Martin and Daniel Gonzalez. NARUC respectfully requests any waivers needed to file this notice two days out of time.

During these meetings, NARUC's representatives discussed the procedural status of the FCC's intercarrier compensation proceeding and NARUC's creation of a Task Force on Broadband over Powerline. Other NARUC assertions, which required the filing of this notice, covered the following:

- (1) A brief discussion of NARUC's views on the AT&T VoIP Petition as previously outlined both in filed comments in two of the above captioned proceedings and in the attached NARUC resolutions;
- (2) A discussion of the classification of VOIP and the need for a role for States in enforcing consumer protections;
- (3) In at least two meetings, speaking specifically on behalf of the Georgia Commission, Commissioner Wise briefly urged the FCC to reject the BellSouth Petition seeking preemption of a Georgia Commission order requiring that company to offer retail DSL service to CLEC customers.

Should you or your staff have any questions or concerns about this letter, please feel free to contact me at 202-898-2207 or via email at jramsay@naruc.org.

Sincerely,

James Bradford Ramsay
NARUC General Counsel

Resolution Relating To Voice Over The Internet Telecommunications

WHEREAS, The Internet is providing opportunities for new methods to originate, transport, and terminate telecommunications, but is also providing new regulatory challenges, and

WHEREAS, AT&T Corp has filed a petition with the Federal Communications Commission requesting in part that the FCC prevent local exchange carriers from assessing interstate access charges on certain phone-to-phone Voice Over Internet Protocol services, pending adoption of final federal rules, and

WHEREAS, In 1998 the FCC reached a tentative conclusion that certain phone-to-phone IP calls may be telecommunications services, even if the carrier converts such a call to IP format and back again, and that a user who receives only voice transmission without other enhancements is receiving a telecommunications service, not an information service, and

WHEREAS, A decision by the FCC, in this docket or elsewhere, to declare all phone-to-phone calls over IP networks to be information services by virtue of the technology could have negative effects on various telecommunications policies, including universal service, and might be inconsistent with the 1996 Act, and

WHEREAS, Voice over the Internet Protocol and intercarrier compensation issues are inextricably linked, and

WHEREAS, A significant portion of the nation's total voice traffic could be transported on IP networks within a few years, now therefore be it

RESOLVED, By the Board of Directors of the National Association of Regulatory Utility Commissioners, convened in its February, 2003 Winter Meeting in Washington, D.C., that the FCC should confirm its tentative decision that certain phone-to-phone calls over IP networks are telecommunications services, and be it further

RESOLVED, That NARUC asks the 706 Joint Conference to systematically address issues relating to Voice Over the Internet Protocol and to explore, with the States and the appropriate joint boards, and with industry, mutually satisfactory methods of dealing with the related jurisdictional rate and separations issues, including but not limited to reviewing, revising and simplifying the varied existing intercarrier compensation regimes while preserving universal service, and be it further

RESOLVED, That NARUC's General Counsel should file with the FCC comments and ex parte presentations consistent with this resolution.

Sponsored by the Committee on Telecommunications

Adopted by the NARUC Board of Directors February 26, 2003

Resolution on Information Services

WHEREAS, Communications consumers are served by an increasing number of technologies in today's markets and these technologies will continue to evolve and develop in the future; *and*

WHEREAS, The existing legal and regulatory constructs evolved in markets where almost all consumers were served by the public switched network and that new constructs will need to evolve and develop; *and*

WHEREAS, These FCC decisions and proceedings have or may assert jurisdiction under Title I over new technologies but without acknowledging that those technologies utilize and include telecommunications services; *and*

WHEREAS, When it passed the Telecommunications Act of 1996, Congress established a definition of "information services" and validated the FCC's previous rulings that enhanced services should be regulated on a different basis than telecommunications services; but Congress did not state that services that combine elements of information services and elements of telecommunications services should be regulated under Title I; *and*

WHEREAS, In 1998 the FCC reported to Congress that carrier regulation should be applied solely to companies that provide underlying transport, and not to the "information services" that are "built on top" of those facilities, and it tentatively concluded that certain phone-to-phone VOIP calls "bear the characteristics" of telecommunications services; *and*

WHEREAS, The Telecommunications Act of 1996 preserves the jurisdiction of the States to regulate intrastate telecommunications services; *and*

WHEREAS, Telecommunications Services associated with information services may be unregulated or more lightly regulated under the FCC's statutory forbearance powers [47 U.S.C. § 160]; *and*

WHEREAS, In February, 2003, NARUC adopted a resolution regarding VOIP services advising the FCC that a decision declaring all phone-to-phone calls to be information services by virtue of Internet technology might be inconsistent with the 1996 Act and could have negative effects on various telecommunications policies, including universal service, *now therefore be it*

RESOLVED, That the National Association of Regulator Utility Commissioners (NARUC), convened in its November 2003 Annual Convention in Atlanta, Georgia, that, in accordance with the principle of technological neutrality, regulatory jurisdiction should be based, whenever possible, on the characteristics of a service, not on the technology used to provide that service, whether the service is commingled with any other service or the speed or capacity of that service; *and be it further*

RESOLVED, That NARUC urges the FCC to carefully consider the following:

- Uncertainty and reduced capital investment while the scope of the FCC's authority under Title I is tested in the courts;
- - Loss of consumer protections applicable to telecommunications services under Title II;
- Disruption of traditional balance between federal and State jurisdictional cost separations and the possibility of unintended consequences and increased uncertainty;
- □Increases risk to public safety;
- □Customer loss of control over content;
- □Loss of state and local authority over emergency dialing services; and

- □ Reduced support base for federal and State universal service as well as State and local fees and taxes, *and be it further*

RESOLVED, That State and federal regulators should work together to adapt their regulatory oversight to the technological changes in communications markets so that all consumers receive the benefits of these new technologies; *and be it further*

RESOLVED, that NARUC General Counsel is authorized to make filings consistent with this resolution, including filing *amicus curiae* briefs in court proceedings.

Sponsored by the Committee on Telecommunications

Recommended by the NARUC Board of Directors, November 18, 2003

Adopted by NARUC Convention, November 19, 2003